

DOCUMENT RESUME

03323 - [A2493547]

[Bid Subject to Two Reasonable Interpretations]. B-189045.  
August 24, 1977. 3 pp. + enclosure (1 pp.).

Decision re: Harco Inc.; by Hiltor Socolar (for Elmer B. Staats,  
Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: General Government: Other General Government  
(806).

Organization Concerned: Department of the Air Force: National  
Guard Bureau; Department of the Army: National Guard Bureau;  
Peevey Construction Co.; Southwestern Contractors, Inc.  
Authority: B-189142 (1977).

The protester objected to the award of a fixed-price contract, alleging that the awardee's bid should have been rejected as nonresponsive. A bid should be rejected if it is subject to two reasonable interpretations, under one of which it would be responsive and under the other nonresponsive. The bid should have been rejected since the prebid telegram could have been reasonably interpreted to mean that the firm fixed-price contract was not offered as required by the invitation for bids. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20549

*Richard Kloman*  
*Proc 2*

**FILE:** P-189045  
**MATTER OF:** Harco Inc.

**DATE:** August 24, 1977

**DIGEST:**

Bid should be rejected if it is subject to two reasonable interpretations, under one of which it would be responsive and under the other nonresponsive. Bid should have been rejected where prebid telegram could have been reasonably interpreted to mean that firm fixed-price contract was not offered as required by IFB.

On February 22, 1977, the Departments of the Army and Air Force National Guard Bureau (National Guard) issued invitation for bids (IFB) DAHA34-77-B-0006 for the construction of a base telecommunications center at Tulsa International Airport, Tulsa, Oklahoma. Bids were opened on March 29, 1977, with the following results:

Southwestern Contractors, Inc.	\$77,076.00
Harco Inc.	78,725.00
Peevey Construction Co.	87,450.00

Prior to bid opening, the National Guard received a telegram from Southwestern Contractors, Inc. (Southwestern), which read in pertinent part as follows:

"Re construction base telecommunications center Tulsa International Airport (ANG) Tulsa Oklahoma Project No. TUL 76-01. We received additional approved bricks after bid mailed. Bid based on brick price of \$90 per thousand.

"Bruce A. Foster Estimator  
Southwestern Contractors Inc."

According to the contracting officer, he advised the bidders present at bid opening that he would contact Southwestern to determine the intent of the telegram. In response to the contracting officer's inquiry, Southwestern stated in substance that the price of the specified brick included in its bid was based on quotes from suppliers

of \$90 per thousand bricks. After the bid had been mailed, a supplier indicated that a more expensive brick would be approved. The intent of the telegram was to advise the National Guard that Southwestern was following specifications and only specified material had been bid. The telegram was not intended to alter Southwestern's bid as submitted.

On March 30, 1977, the day after bid opening, Harco Inc. (Harco), filed a protest with the National Guard. The National Guard denied Harco's protest and awarded the contract to Southwestern. Harco subsequently filed a timely protest with our Office alleging in substance as follows:

1. Southwestern's statement that its bid was based on brick costing \$90 per thousand was intended to give it the option to request a price increase if the specified brick actually cost more than \$90 per thousand. Since Southwestern's bid was not fixed price, it should have been rejected as nonresponsive, and the contract should have been awarded to Harco.
2. Harco would have been the low bidder if it had qualified its bid in the same manner as Southwestern did.
3. Southwestern was given the opportunity to accept or reject award after bid prices were made public.
4. The contracting officer would not provide advice concerning protest procedures.

The National Guard, on the other hand, contends that there was no reason to reject Southwestern's bid. More specifically, the National Guard, inter alia, states in substance that while the telegram submitted by Southwestern is confusing or puzzling, it does not purport to change, modify, or revise Southwestern's bid; it gratuitously provided the cost of the bricks contained in its bid; the unsolicited price of brick does not add or detract from Southwestern's intent to be bound by all the terms, conditions and specifications of the IFB; Southwestern clearly expressed its intent to comply with the LFB by signing and returning Standard Form 21, entitled BID FORM (CONSTRUCTION CONTRACT); and Southwestern's telegram was simply complementary to the information contained in that form. Moreover, the National Guard states that while it is a basic Federal procurement principle that statements, documents, or other information submitted after bid opening may not be used to make a nonresponsive bid responsive, a bidder properly may be requested to confirm a bid, but the confirmation may not be inconsistent with a reasonable interpretation of the bid as submitted.

B-189045

The issue is whether Southwestern's bid should have been rejected, as Harco asserts, because of the alleged telegraphic qualification.

In M.A. Barr, Inc., B-189142, August 3, 1977, Barr included in its bid the following handwritten notation: "Brick allowance \$135/1000 using standard block." Barr contended that the notation merely advised the procuring activity that its allowance for the specified brick was \$135 per thousand. This was considered to be a reasonable interpretation; however, another reasonable interpretation of the notation could be that Barr had conditioned its bid on brick costing \$135 per thousand. Consequently, if the price of brick increased after award, Barr could request additional compensation from the Government citing the brick allowance notation as justification for such increase. Under this interpretation, Barr's bid would have been nonresponsive because it did not offer a fixed-price contract as required by the IFB. We held that since Barr's bid was subject to two interpretations, under one of which it would be responsive and under the other, nonresponsive, the bid must be rejected as ambiguous.

In the instant case, Southwestern's telegram can reasonably be interpreted to mean that Southwestern's bid price was based in part on brick costing \$90 per thousand. In our opinion, the telegram can also be reasonably interpreted to mean that Southwestern had conditioned its bid and the Government would be liable to Southwestern if the specified brick cost more than \$90 per thousand. Under the former interpretation, Southwestern's bid would have been responsive; under the latter, it would have been nonresponsive for failure to bid a fixed price as required by the IFB. Consequently, Southwestern's bid should have been rejected as nonresponsive. Therefore, the protest is sustained.

However, since the contract is reportedly more than 50 percent complete, no meaningful remedial action can be taken.

*Milton J. Auster*  
for Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*Richard Kloman*  
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IN REPLY  
REFER TO: B-189045

August 24, 1977

The Honorable Henry Bellmon  
United States Senate

Dear Senator Bellmon:

We refer to your letter of May 16, 1977, concerning the protest of Harco Inc. against the award of a contract under solicitation No. DAHA34-77-B-0006, issued by Oklahoma National Guard.

By decision of today, copy enclosed, we have sustained the protest. However, since the contract is reportedly more than 50 percent complete, no meaningful corrective action can be taken.

Sincerely yours,

*for* *Milton J. Fowler*  
Comptroller General  
of the United States

Enclosure